

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JODY L. KRISS,	:	APPEAL NO. C-160503
	:	TRIAL NO. A-1502350
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
REVIEWER 1-25	:	
Defendants,	:	
and	:	
OST GROUP,	:	
Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Plaintiff-appellee Jody L. Kriss filed a complaint for declaratory judgment and injunctive relief against 25 anonymous defendant reviewers numbered 1-25. According to Kriss's complaint, the defendant reviewers "are natural persons whose identities and residences are unknown . . ." Kriss claimed that the reviewer defendants had published defamatory statements about him on certain websites listed in the complaint. Because their identities and residences were unknown, Kriss served the reviewer defendants by publication. None answered the complaint or otherwise entered an appearance. The trial court later granted Kriss a default judgment. In pertinent part, the court held that the reviewer defendants had published defamatory statements about Kriss on the listed websites. The court's

judgment prohibited the reviewer defendants “from any further acts of defamation or publication of false statements * * * regarding Plaintiff on the Websites [named in the complaint] or other public-facing websites * * *.” The reviewers were ordered to remove or to request removal of the defamatory statements that each had published.

Approximately six months after the trial court had entered the default judgment, the OST Group (“OST”) moved to vacate the judgment as void or, in the alternative, to grant OST relief from the judgment under Civ.R. 60(B). OST, a Russian corporation, claimed that it was a reviewer defendant in Kriss’s lawsuit. Following briefing by the parties, the trial court held that OST failed to establish that it was a reviewer defendant, and therefore, that it did not have standing to attack the underlying judgment. It denied OST’s motion. This appeal followed.

In its first assignment of error, OST contends that the trial court erred when it determined that OST lacked standing. We review the trial court’s determination of standing *de novo*. *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897 975 N.E.2d 977, ¶ 20. At its most basic, “standing” is defined as “ ‘[a] party’s right to make a legal claim or seek judicial enforcement of a duty or right.’ ” *Ohio Pyro, Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, 875 N.E.2d 550, ¶ 27, quoting *Black’s Law Dictionary* 1442 (8th Ed.2004).

OST first contends that it had standing because it was a reviewer defendant. In support of this argument, OST submitted the affidavit of Konstantin Yudin, the owner and manager of OST. According to Yudin, OST is a Russian corporation that owns and maintains 13 of the websites named in Kriss’s complaint. Yudin’s affidavit stated that OST “posted” and “re-published” some of the complained-of reviews. Kriss’s complaint alleged that the reviewer defendants had “published” the offending reviews. OST did not assert that it had “published” anything. However, even if the

terms “posted” and “re-published” are synonymous with “published,” as OST seems to argue, Kriss’s complaint was against those natural persons who had published the reviews. OST is a corporation. It is not a natural person, and therefore is not a reviewer defendant. *See Belvedere Condominium Unit Owners’ Assn. v. R.E. Roark Cos.*, 67 Ohio St.3d 274, 287, 617 N.E.2d 1075 (1993) (a corporation is distinct from the natural persons that comprise it).

OST next argues that, even if it was not a reviewer defendant, it nevertheless was affected by the trial court’s judgment and therefore had standing to collaterally attack it. *See Ohio Pyro, Inc.* at ¶ 23. Specifically, OST claims that the court’s judgment affected its First Amendment rights. OST did not raise this argument in the trial court and it has forfeited all but plain error on appeal. *See Risner v. Ohio Dept. of Natural Resources*, 144 Ohio St.3d 278, 2015-Ohio-3731, 42 N.E.3d 718, ¶ 26. OST has not demonstrated, or even argued, that there was error that “challenges the legitimacy of the underlying judicial process,” warranting application of the plain-error doctrine, as is its burden. *See id.* at ¶ 27. We therefore hold that this argument has no merit. The first assignment of error is overruled.

In its second assignment of error, OST contends that the trial court erred when it overruled its motion to vacate the judgment as void or for relief from judgment under Civ.R. 60(B). Resolution of the first assignment of error renders this one moot, and we decline to address it. *See App.R. 12(A)(1)(c)*.

Because OST lacked standing to attack the underlying judgment in this case, the trial court should have dismissed OST’s motion instead of denying it. *See Bank of Am. N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 23. Accordingly, upon the authority of App.R. 12(A)(1)(a), we modify the judgment

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appealed from to reflect the dismissal of OST's motion. And we affirm the judgment as modified.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on April 12, 2017
per order of the court _____.

Presiding Judge